

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 23, 2015
Bill No: HB 105-280

Sponsor: Andrea Reeb
Short Title: Traffic Offense Video Testimony

Agency Name and Code Number: 280 – Law Office of the Public Defender (LOPD)
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: none known
 Duplicates/Relates to Appropriation in the General Appropriation Act: unknown

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 105 would amend the Implied Consent Act (DWI) to allow laboratory analysts and toxicologists to testify in court proceedings via interactive video, rather than in person.

FISCAL IMPLICATIONS

The fiscal impact of changes in criminal procedure is difficult to predict. LOPD might have to engage in extensive litigation over constitutional challenges related to the proposed legislation. *See Significant Issues and Other Substantive Issues below.* Additionally, HB 105 would make it easier to bring certain offenses to trial, so it may have a concomitant impact on the number of cases LOPD has to defend.

SIGNIFICANT ISSUES

Analyst testimony implicates the Confrontation Clause of the Sixth Amendment to the United States Constitution and its New Mexico counterpart in the same way any other witness’s testimony does. Case law is clear that video testimony generally does not satisfy the right to look your accuser in the eye and cross-examine him before the factfinder. These constitutional rights cannot be abrogated by statute.

Convenience is *not* a valid exception to the confrontation requirement. *State v. Chung*, 2012-NMCA-049, ¶ 11 (citing *State v. Almanza*, 2007-NMCA-073, ¶ 1, 141 N.M. 751). Because the bill provides no particular reason for avoiding in-person testimony, reliance on the statute would not be sufficient to overcome constitutional mandates for in-person testimony. *Cf. Chung*, 2012-NMCA-049, ¶ 11. In the rare cases where the state has sufficient justification to request video testimony, a separate constitutional assessment must be conducted, and video testimony might be allowed. *See, e.g., State v. Thomas*, 2016-NMSC-024, ¶¶ 28-29. A statute cannot do away with that constitutionally-mandated inquiry.

There is reason to believe this bill is on even less solid constitutional ground that it was in previous years, given the United States Supreme Court’s recent opinion in *Smith v. Arizona*, 602 U.S. 779 (2024), which held that, if an expert forensic analyst for the prosecution conveys an out-of-court statement in support of his opinion, and the statement supports that opinion only if true, then the statement has been offered for the truth of the matter asserted, necessarily

implicating the Confrontation Clause, which applies to testimonial hearsay. *Smith* was about whether the state could call an analyst to testify who did not conduct the initial testing, by having them review the testing analyst's documentation and say whether the substance tested was, in fact, the suspected unlawful substance. Because this bill would presumably allow even a *substitute* analyst to testify by video, it adds a layer of concern to the confrontation question. *Smith* underlined that forensic witnesses are the kinds of witnesses the clause applies to and that, particularly in cases where the subject of the testing is central to the question of guilt, the defendant's confrontation rights must be protected.

PERFORMANCE IMPLICATIONS

As noted above, if HB 105 were enacted, LOPD would possibly have to engage in extensive litigation on each case over constitutional challenges. The bill may also implicate other constitutional rights due to downstream effects on criminal procedure.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

It is not clear that putting this language in the ICA and related on-site warnings would be a sufficient basis for waiver of a constitutional right.

ALTERNATIVES

Status quo. Prosecutors can have analysts testify by interactive video if they demonstrate necessity other than convenience, or if the parties stipulate to that method.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

See Alternatives above.

AMENDMENTS

None noted.